

REPORT

169

OF THE

Select Committee

ON

SLAVERY, THE DRED SCOTT DECISION,

AND THE

ACTION OF THE FEDERAL GOVERNMENT THEREON,

SUBMITTED

THURSDAY, Nov. 18, 1858.

MONTPELIER:

E. P. WALTON, PRINTER.

1858.

IN HOUSE OF REPRESENTATIVES, }
TUESDAY, Nov. 12, 1884. }

Report made, and on motion of Mr. Bridgman, as amended by Mr. Spooner, the Report was

Ordered to lie, and the Clerk directed to procure the printing of eleven hundred copies thereof, for the use of the members of the House.

Attest,

CHARLES CUMMINGS, Clerk.

REPORT

OF THE SELECT COMMITTEE TO WHOM WAS REFERRED FOR ADVICE OF THE GOVERNOR'S MESSAGE AS RELATES TO SLAVERY, THE DRED SCOTT DECISION AND THE ACTION OF THE NATIONAL GOVERNMENT THEREON; ALSO CERTAIN PETITIONS, MEMORIALS AND RESOLUTIONS ON THE SAME SUBJECT.

To the House of Representatives now in session:

The Select Committee to whom was referred so much of the Governor's Message as relates to Slavery, the Decision of the Supreme Court of the United States in the case of Dred Scott and the action of the National Government thereon; also, the petition of William Slade, James M. Slade and one hundred and fifty-eight others; of Solomon Foot, George T. Hedges, William O. Kittredge, Alanson Allen, Luther Daniels, Charles L. Williams and others; the memorial of Ryland Fletcher, Joseph Freeman, Warren Skinner, Clark H. Chapman, Redfield Proctor and others; of Rowland T. Robinson, R. W. Freeman and two hundred and fifty-one others; and of William R. Shaffer and others; the petition of R. P. Walton, Lawrence Redwood, Ferward E. Merrill, William H. Lord, H. P. Cushing, Eli Ballou, Joseph Polard, George W. Ollamer, S. S. Bayre and one hundred others; of Nathan T. Speague, Ira Ballou,

Daniel Farrington and others; of John L. Marsh and Frederick Button; of H. Hastings, J. Claffin and four hundred and fifty-eight others; of Martin Wiers, Calvin Joslyn, N. Fisher, S. M. Sewer and of more than three thousand others, petitioners, being citizens from all classes, professions and pursuits, and residing in all parts of the State--praying for legislative protection against the Fugitive Slave Law, and for the enactment of laws securing Freedom to all persons within this State, and protecting its citizens against the aggressions of Slavery and the encroachments of the Federal Government in all its departments: having, under a deep sense of the obligations imposed on them by this reference, taken the same under serious and careful consideration, respectfully report:

That, at no period since the adoption of the Constitution and the formation of the American Union, has there been a time which, in the opinion of your Committee, was so fraught with peril to that Constitution and Union as the present. Principles have been advanced and doctrines asserted and acted upon by the Chief Executive of this union, endorsed by a party majority in Congress, and promulgated from the bench of the Supreme Court of the United States, which if practically enforced would subvert the Sovereignty of the States of this Union. If practically enforced, they would destroy those cherished State Rights held so sacred by the Fathers of the Republic, by the National Judiciary and by the whole Democracy of the country, from Thomas Jefferson and Chief Justice Marshall down to the advent of some of the recent Administrations of this government.

If these doctrines be enforced as constitutional law, then are the lives, the liberty, and the property of the citizens of this State without protection. Citizens of Vermont and of the Free States can be reduced to Slavery with impunity, their persons imprisoned and their property destroyed without remedy. That bond of Union called the Constitution of the United States,

instead of "establishing justice, promoting the general welfare, or securing the blessings of liberty," is made instrumental to the destruction of all these. Instead of cherishing and protecting the civil and political rights of the citizen and of the States, this Constitution is used by its expounders and administrators, as an instrument to subvert and annihilate these rights. If this condition of things is to continue, no Free State could exist. It would be an anomaly, a contradiction of terms, an utter impossibility for Freedom and Slavery to exist and flourish together at the same time. One or the other must eventually yield to its inevitable doom. No free community or free man would submit to remain as a partner or member of a union where his dearest and most cherished rights were cloven down and destroyed.

For the correctness of these positions, your Committee would present to the House a few prominent considerations:

In the first place they would state that Vermont and all the Free States are excluded (if these doctrines prevail,) from all the Territories of the United States, where consenting to settle in communities where Slavery is protected by law—thus reducing Free Labor to a competition and level with Slave Labor, and the freeman of the North to the abject condition of the non-slaveholder of the South. The Territories have no right to prohibit Slavery or legislate against it.

Your Committee cannot overlook the fact that the great merit claimed for the Kansas-Nebraska Act by its originators was that it inaugurated the democratic principle of "popular sovereignty." A new era had dawned in the history of legislation on this subject, and the people of a Territory were "left free to form and regulate their domestic institutions in their own way," through all coming time. The vexed question about excluding Slavery from the Territories was forever settled and never again to be disturbed. The people, "the sovereigns," had the right to admit or exclude it as they pleased to determine. It is believed

that the dominant party and its leaders, during the last presidential election, maintained this doctrine throughout the Free States, and that the elections in some of those States were seriously affected, if not determined, by the popular belief in relation to it. That the election of the Chief Magistrate of the nation was owing to this fact is not at all improbable.

Now, the President and the Supreme Court declare "that Slavery exists in Kansas," and in all the Territories, "under the Constitution of the United States," and that the people of a Territory, or Congress even, have no right, by legislation, to exclude it. But it is a significant fact that Congressional legislation is now demanded, by the Slave power, and by the organs of the Administration, to secure the slave-holder, in the Territories, in the free use and enjoyment of slave property. Thus is Slavery established, protected and defended, on the very soil dedicated to Freedom by all law, human and Divine.

But this doctrine, that Slavery exists and is protected in the Territories, proceeds upon the ground that Slaves are *Property*, and recognised as such by the Constitution of the United States. If this position be true, then, certainly, the slaveholder, as a citizen of the United States, is invested with the right to take and enjoy that property wherever the jurisdiction of the Federal Government extends. In other words, the Constitution of the United States recognises and protects the right of property in human beings, and carries this protection wherever its authority extends. He is protected in the right on board of national vessels on the high seas, and wherever the national flag carries the national property. Wherever Federal law or Federal power prevail, he is protected in this right, whether on the land or the sea, whether in the Territories or the States. Wherever the Federal Government own a foot of land, a fortification or a public building, an island, a harbor, or a break-water,—whether in or out of the States,—there the slaveholder has a right to take his Slaves, and enjoy his property in them, unmolested.

Nay more: if property in Slaves be a Constitutional right, (and it is so distinctly affirmed by the President and the Supreme Court,) then that same Court might, with equal truth, declare that the slaveholder has also the right to take and enjoy this species of property in all the States of the Union, under that clause of the Constitution which gives to the citizens of each State all privileges and immunities of citizens in the several States. If he has the personal right of going from one State into another State, then might the Court say, he has the same right to take and enjoy any property which the Constitution of the United States recognises and protects as such. And if this be a right at all, it is not a mere temporary right, to be enjoyed while passing through the State, but to continue for such time as any citizen slaveholder shall be pleased to remain in such State. If the Constitution does not limit the time he is to continue in such State, neither does it limit the time beyond which the right ceases to hold and enjoy his property. This doctrine, thus applied, would convert every State into a slaveholding State, precisely as it now makes every Territory a slaveholding Territory; and no State or Territory could escape its consequences. No State or Territory would have the right to exclude Slavery from its limits. The trampling tread of the Slave might be seen among the green hills and along the valleys of New England, which, in Elvian dreams, we had long fancied were consecrated as the home of the free.

While your Committee by no means admit the correctness of the construction of the clause of the Constitution referred to, yet they are prepared, and the country should be prepared, to see these doctrines fully and practically carried out and enforced, whenever it becomes convenient, or is promotive of the interests of Slavery, to cause another Dred Scott decision to be made. The "Washington Union," the organ of the Administration and of the Democratic party, distinctly avows that the slaveholder has the

some right to take with him his property (in slaves) into any of the States, that he now has into the Territories, and no State has the power to prohibit the exercise of this right. This doctrine of the Constitution has long been foreshadowed. In a report made to this House, on Slavery, in 1850, is the following significant paragraph :

"Ever active and ever vigilant, the propagandists of Slavery have enunciated another startling principle of their creed. Even now they claim the Constitutional right to take their Slaves into the Free States, and there hold them while passing; and, in perfect consistency with this doctrine, proclaim the right to call the roll of their slaves in the presence of freemen on the great Northern battle-fields of the Revolution. And yet there are not wanting Federal Judges and Northern politicians who aid (and some of them claim to be leaders) in these monstrous perversions of the Constitution. The *Kane*, the *Orion*, the *Cookings*, and *Lecompts*, are but types of a class to be increased unless Slavery be restricted." What was predicted then has since become matter of history.

Your Committee will now advert to what they consider the settled doctrine and Constitutional law in relation to the Territories. A majority of the Supreme Court, and the President, promulgate the doctrine on this point as follows :

Congress has no right by the Constitution, to prohibit slavery north of a certain line—have no right to prohibit its introduction into the Territories; and therefore the Missouri Compromise and all acts of Congress excluding Slavery from the Territories are void.

The power granted to Congress to legislate and govern the Territories is contained in the third section of the fourth article of the Constitution, in these words :

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States."

The first objection started, by Chief Justice Taney, to the power claimed in this clause of the Constitution, is so remarkable that we will give it in his own words:

"It," the clause in question, "applied only to the property which the States held in common at that time" (when the Constitution was adopted) "and has no reference whatever to any Territory which the new sovereignty might afterwards itself acquire."

Now if this provision applied only to the property which the States held at the adoption of the Constitution, and that clause executed itself when that property was transferred by the States to the new government, the question arises, where is the power or authority to be found which can govern the Territories or property acquired since the formation of the present government? There is no other clause and no other power given in the Constitution except this. By virtue of this clause Congress organizes the Territories, legislates for them, and the President sends his governors and judges there. Even the noted Kansas-Nebraska act could never have been vitalized for a moment were it not for the power here given. All those laws enacted by the Shawnee Mission Legislature in 1853, so resolutely sustained by the Democracy of the country, would fall powerless to the ground. No Territory could be organized, none could be governed, were it not for the power here granted in the Constitution. It is manifest, therefore, that this position of the Court is at war with common sense and with the practice of every Administration, and cannot be sustained.

The language of the clause itself, your Committee believe, is conclusive on this point. "The Congress shall have power to make all needful rules." What is a rule? The true definition of law, as laid down by all elementary writers, is a rule of action, and is applied to all kinds of actions. It is the same, therefore, as if the Constitution had said, "The Congress shall have

power to make all needful laws respecting the Territory of the United States." It confers on Congress the sole and only power to govern and legislate for the Territories.

But supposing the power were not clearly given, what, your Committee would ask, is the *rule of construction* to be applied in settling the question of power or right of Congress to govern the Territories. We will adopt a single rule of construction of the Court in this same case of *Dred Scott*, in relation to the power of Congress over another subject. The Court is laboring to prove that Congress has the power to *EXPAND* the Territory of the United States: and with a Court and Government disposed to add Cuba and Central America to the already extended dominions of a great Southern Slave oligarchy, this power must be an important one. But the Court find, on examination, that there is *no express power* given in the Constitution to "expand" by acquiring new Territory, and it therefore rests merely in the discretion of Congress. Jefferson and Madison found no such power in the Constitution, and the acquisition of Louisiana and Florida were justified on the ground of necessity only. But say the Court, page 53:

"In the construction of this power by all the departments of the Government, it has been held to authorize the acquisition of Territory not fit for admission at the time."

We have had the Supreme Court of the United States, in the absence of all explicit provision of the Constitution on this subject, resorting to the political history of the country, and to the legislation of Congress—to the purchase of Louisiana, Florida, the acquisition of Texas, California, Utah and New Mexico, to justify the exercise of a doubtful power. Let us apply this rule of construction to the power of Congress to govern the Territories and to prohibit slavery therein, and see whether "it has been held by all the departments of the Government" that Congress does or does not possess this power. Your Committee will

gence, for this purpose, at the history of legislation, of judicial decisions, and the public acts of eminent statesmen.

On the 19th day of April, 1784, and again in 1787, Thomas Jefferson drew up his celebrated Ordinance for the government of the North-West Territory, forever excluding slavery from all the Territories then belonging to the Confederation of States. This Ordinance was adopted by the Congress of the Confederation on the 13th day of July 1787.

In 1789, after the adoption of the present Constitution of the United States, Congress passed a law carrying the provisions of that Ordinance into effect. And the clause inserted by Jefferson, in that Ordinance, prohibiting Slavery in all the Territory North-West of the Ohio, owes its only validity and force to this Act of Congress, which adopted and confirmed the Ordinance of 1787.

On the 7th day of August, 1789, George Washington approved of that act, and with his own hand signed the bill forever prohibiting Slavery from all the Territories of the United States.

In 1820, Congress by an act, in the nature of a Solemn Compact or Compromise between the States, forever excluded Slavery north of 36 degrees 30 minutes. Nearly every Southern member of Congress, including Clay and Calhoun, voted thus to exclude slavery, and the act was sustained by Southern statesmen with scarcely an exception.

James Monroe and his Cabinet, including Mr. Adams, after mature deliberation, approved of the law of 1820, and the President signed the bill.

Chief Justice Ma shall, in the case of the Atlantic Insurance Company vs. Canter, decided that the Territories "are governed by that clause of the Constitution of the United States which empowers Congress to make all useful rules and regulations respecting the Territory," &c. And again, says Chief Justice Marshall,—"The power to govern the Territories is unquestionable." All the Judges, from the Slave States, united in this

episodes, with Judge Marshall. This was in 1828, when Florida was a Territory, and eight years after the prohibition of Slavery by the Missouri Compromise bill.

In 1845, on the first day of March, Congress adopted the resolutions for the admission of Texas, by which Slavery was prohibited in all that part of the Territory lying north of 36 deg. 30 min. The whole South and the whole Democratic party in Congress united in voting for this prohibition.

In 1848, President James K. Polk approved and signed the bill forever prohibiting Slavery in Oregon. In this he was sustained by the then Democratic party.

In 1848, Congress, including Southerners as well as Northern members, voted to extend the Missouri Compromise line to the Pacific Ocean: thus voting to exclude Slavery from all the regions north of that line, on both sides of the Rocky Mountains.

In 1850, Congress passed an act establishing a Territorial Government in New Mexico, in which the prohibition against extending Slavery north of thirty-six degrees thirty minutes was reaffirmed.

Thus it will be clearly seen, by adopting the plain rule of construction of the Court in this case of *Dred Scott*, that "in the construction of this power," to govern and prohibit Slavery in the Territories, "by all the departments of the Government, it has been held to authorize" the exclusion of Slavery from the Territories of the United States by Congressional legislation and by Judicial decisions from the very moment the Constitution was ratified by the States down through the whole period of our political history and existence, as a nation, to the Kansas-Nebraska act of 1854, which repealed the Compromise of 1820. In 1854, then, was the first legislative act, and in 1857 was the first judicial construction which doubted or denied the constitutional power of Congress to govern or prohibit Slavery in the Territories.

Until then it was never doubted that Congress possessed the same power to prohibit slavery, arson, robbery, murder, or any other crime or evil in the Territories that the State Legislatures have to suppress the same in the States. It was reserved to the Stringfellers, the Aitchesons and the Douglasses, the Pierces and Buchanans, the Eldells and Townes, the Masons and Bailers, the Orms, the Greeses and the Richardsons, in the political, and to the Tanrys, the Wynnes, the Daniels and the Griers in the judicial department, to make the important discovery that Congress has no power to prohibit Slavery in the National Territories.—The overwhelming power of a single sectional interest has produced this wonderful combination of party judges and party politicians, acting for and in unison with each other. Power, unlimited, can be found in the Constitution and in Congress, to extend, protect and perpetuate, but none to resist, restrain, or prohibit this great national evil. Slavery is made the rule and freedom the exception.

Your Committee maintains that the reverse of all this is not only true, but no authority can be found for this extra-judicial opinion in the case of *Dred Scott*. The Constitution of the United States neither creates nor continues Slavery in any Territory. It cannot legally exist there for a moment. Congress, by virtue of that Constitution, can no more sanction, recognize or create property in slaves than it can create a despotism—a monarchy. It can no more create a slave than it can create a King. Property in slaves can only be held by the physical law of force where the local law does not suppress it. The moment it passes from under the operation of these local laws, it is no longer property but persons—freemen. SLAVERY IS AN OUTLAW EVERYWHERE OUTSIDE OF A SLAVE STATE.

Lord Mansfield, Chief Justice Marshall, and a host of eminent judges, both in Europe and America, have done honor to the judicial office by maintaining and enforcing these principles, not

as the doctrine of the common law merely, but of the universal law of nature. Even the Slave States, in their palmy days, have been proud to recognize these principles as settled law; and it was not until the advancing strides of the slave power impelled the Supreme Court and the President to ignore them, that these States have faltered in their noble avowal of this higher and universal law.

As an illustration, among many others, of the full recognition of these principles in the Slave States, we will only instance the case of *Bankin vs. Lydia*, decided by the Court of Appeals, the highest judicial tribunal in Kentucky. In that case the learned Judge Mills, in delivering the opinion of the Court, says:—

"We view this" slavery "as a right existing by positive law of a municipal character, WITHOUT FOUNDATION IN THE LAW OF NATURE, or the unwritten and common law."

From the vast number, high standing, and urgency of the petitioners, before your Committee, for a law to prevent the delivering up of any person who has been held as a slave, we are impelled by a sense of duty seriously to consider this subject.

By the act of Congress of the 18th of September, 1850, fugitive slaves (persons owing service,) escaping into the Free States are, by a summary process, brought before a United States officer called a Commissioner. If the claimant makes it appear that the individual arrested is his slave, (owes service,) he is delivered up to such claimant to be remanded to his former condition of Slavery. In these cases there is no such thing as common law process; the supposed fugitive is not a witness; no trial by jury is allowed him; any proof that tends to satisfy the Commissioner, or any that he pleases to receive, is admissible—and there is no appeal from his decision to any other court or tribunal.

The fourth article and third clause of the second section of the Constitution of the United States is in these words:

"No person held to service or labor in one State, under the

laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

The question arises, does this clause refer to Slaves? Because, if it does not, if they are not included, then it is clear that no slave can be claimed or arrested under its provisions in a Free State. It is the slaveholder who makes the claim, and his own laws will determine whether the slave is, or is not, a person.— If he is not, then no claim can be made, for the Constitution only refers to persons.

In the opinion of your Committee, nothing is more clearly settled by the laws of the Slave States, than the doctrine that slaves are not, and never were, persons, but are property, chattels, things, goods, anything but persons. The decisions of the Courts in the Slave States are so numerous on this point that we will only refer to one. The learned Judge Gaston of North Carolina, one of the most distinguished and able jurists of this or any other country, lays down the law, in the Supreme Court of that State, that

"Slaves are not, in legal parlance, persons, but property. The moment the inequality or disqualification of slavery is removed, they become persons, and are free."

Two classes are here most clearly defined by the Court. One class, "slaves," are not persons, but property. The other class, "persons," are not slaves, but free—citizens or subjects of the State. Therefore, if the slaveholder claims his slave under this clause of the Constitution, he cannot succeed, for the reason that the Constitution makes no reference to property or to slaves, but to persons. If he claims a "person," from "whose service or labor may be due," then that same Constitution declares, in the fifth article of amendments, that each person shall "not be deprived of liberty without due process of law." Due process

of law is a suit at common law, carrying with it all the rights appertaining to such process, including a trial by jury. The rights of the parties in a suit at common law are declared by the seventh article of amendments to be as follows:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law."

But it is sometimes assumed that the word "person" in this fugitive clause, was intended to include Slaves. To this there are two conclusive answers. The first is, if it was intended to include slaves, then the word "slave" would have been used. It was as easy to use that word as any other. The framers of the Constitution, with a full knowledge of the difference between the two classes, "persons" and "slaves," and the Southern members knowing that "slaves" were not "persons," nor so regarded by their laws, all consented to use the word "person" in the Constitution as clearly expressing the meaning of its framers. The other answer is, that the history of the adoption of this clause proves the meaning attached to the word used by the Convention. A proposition was first distinctly submitted to the Convention to reclaim fugitive slaves. It received no support. No one rose "to do it reverence" or defend it, and it was abandoned and scouted as a proposal "not fit to be made." The very next day the clause, as it now is—"persons held to service,"—was proposed and unanimously adopted. The word "slave" was thus distinctly ignored and excluded, and the word "person" as distinctly approved and retained.

But the clause, before referred to, in the fourth article, includes no person but those held to service "*under the laws thereof*," meaning the laws of the State from which the fugitive has escaped. On this point, Senator Mason, of Virginia, declared "that

no proof could be brought forward that slavery is established in the slave States by existing laws—that no such law could be produced.” General Stringfellow, of Missouri, Messrs. S. C. Brooks and McQueen of South Carolina, Smith of Virginia, and Thomas J. Chiguen of North Carolina, have fully endorsed the above. If a slave, therefore, is not held to service “under the laws thereof,” and is not a “person,” no claim for his surrender can be sustained under this clause. And, moreover, like all laws and Constitutions, where the attempt is made to deprive a person of his liberty or life, it is to be construed strictly in favor of the prisoner—in favor of freedom.

The Fugitive Slave Law of 1850 is, therefore, in the opinion of your Committee, unconstitutional and void, not only because Slaves are, by its provisions, “delivered up,” but because it deprives “persons” of liberty and property “without due process of law.” It denies the right of trial by jury to such persons. It denies the right of appeal. It denies the right of trial by Court. The “claim” is made, not before a Court of Justice, but before a Commissioner, who is bound by no rules of law or evidence, and is irresponsible except to the slave power who created him.

But this act should be declared inoperative and void, in the judgment of your Committee, for another reason: Congress is not authorized by the Constitution to enforce it. No power is granted to Congress for that purpose. The language of the fugitive clause in the Constitution, before quoted, is “shall be delivered up,” but it confers no authority and imposes no duty on Congress to deliver up. Who, then, is clothed with authority, and on whom is this duty imposed? The answer to this inquiry is found in the tenth article of Amendments to the Constitution, in these words:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

No power is delegated to the United States, or to Congress, by the Constitution, to "deliver up" "persons held to service"—nor is the power prohibited by it to the States. The question then is placed beyond doubt, and the inference is irresistible, that, by the tenth article, this power "to deliver up" is reserved to the States respectively or to the people.

And it is immaterial, so far as the question of power is concerned, whether the States do or do not "deliver up" persons held to service or labor. That is a question addressed to their sound discretion, and it is for each State to determine its duty in the matter. It is enough to say that the Constitution, in explicit terms, leaves the power, the duty, and the discretion with the States, or the people, and with them only.

But it may be said that the Supreme Court has decided that Congress, under this clause of the Constitution, has the power to legislate on this subject, and compel the return of fugitive slaves, and that the act of 1850 is constitutional. Now if Congress, by that act, had clothed these irresponsible commissioners with power to render the man to the gallows to be hung, instead of to slavery for life, (a lesser evil of the two,) and the Supreme Court, in some other *Prigg* or *Dred Scott* decision, had justified the sentence of the commissioner, and decided that Congress had the power thus to legislate, we should be precisely as much bound by that decision as by either of the decisions above referred to. But it cannot be true that we are concluded by either. The States of this Union, and more especially legislatures who have taken an oath to support this Constitution, must support it as they understand its plain and obvious import. No party Presidents or Judges, no party politicians or legislators, have the right to interfere between us and our oath and conscience, as the Court has done in the case of *Dred Scott*, to fritter away the plain declarations, the fundamental principles, and all guarantees of human rights contained in that instrument. We are

sworn to support and defend, not to assault and destroy, the Constitution—and whenever called upon to act, we must be true to that obligation.

But your Committee are now to consider that part of the decision of the Supreme Court, not extra-judicial in its character, which the Court, by the record, had the right to decide. However flagrant and unjustifiable may have been the extra-judicial episode of the Court, before referred to, in relation to slavery and the Territories, yet this judicial decision in relation to citizenship is the most heartless and hardened act of despotism ever attempted by any Court in Christendom. It upsets, overthrows and demolishes the settled principles of all Laws and Constitutions as well in America as in the enlightened nations of Europe. And yet we find this decision endorsed by the President, by the State Department, and by the Cabinet ministers.

By this decision of the Supreme Court of the United States, citizens of Vermont, and of the Free States, have no right, while in another State, to defend or protect their lives, their liberties or their property, whenever or wherever these rights are invaded. They have no right to see the citizens of another State in defence of those rights. They cannot be made a party to any such suit. They are declared outlaws by their own government, with no rights which the President, Congress, or the Supreme Court are bound to respect. They are declared not to be citizens of the United States, and why then should the Union of the States be of value to them?

Your Committee cannot contemplate, without trembling and alarm, the condition in which the citizens of this and of the other Free States are placed, by the decision of this Court. Citizens, freemen, who have been born in our midst, who have resided with us their whole lives, who have cultivated their farms and paid their taxes for the support of government—happen from

inclination or business to visit another State of the Union. The Constitution of the United States secures to every citizen, wherever he chooses to go, within its jurisdiction, all the privileges and immunities of a citizen in the several States. Yet in defiance of this solemn guaranty and constitutional right, he is thrown into prison, or, by the strong arm of power, reduced to slavery. Nay more, he may be kidnapped from his free-ships, from his home in his native State; transported into another State, and there branded as a slave and held as such by more physical force. What is his remedy? Can he testify in a Court of justice? Can he sue in the Courts and recover his freedom? He makes the attempt, and the wretch who chains him has an easy task to perform. He enters a simple plea to the jurisdiction, and his work is done—his victim is secure. No law, say these Judges, State or Federal, can relieve him, and no power, save that of the Almighty, can restore him his lost rights. Human laws and human redemption are powerless.

That your Committee may not be accused of misrepresenting the point, and the only point, which the Court decided, or had a right to decide, we will quote that point in the language of the p/ea in full;—first providing that Dred Scott, a citizen of the United States and of the State of Missouri, who was, by the laws and decisions of the Courts of Missouri, as much entitled to his freedom as James Buchanan, or either of the five Judges who pronounced against him, commenced a suit in trespass in the Circuit Court of St. Louis County, Missouri, against John F. A. Sandiford for his freedom, and for the freedom of his wife Harriet and of his daughters Eliza and Lelia, who were by force held as slaves by said Sandiford. The case was tried in 1854, when the Court decided that Scott, his wife and daughters, were all entitled to their freedom. The case then passed to the Supreme Court of the State, was remanded to the Circuit Court of the United States to await the decision of the Supreme Court, which

was rendered at the last December term, but one, at Washington. The plea on which the defendant relied is in these words:

"That the plaintiff is a negro of African descent, his ancestors being of pure African blood, and who were brought into this country and sold as slaves."

The truth of this plea being admitted on demurrer, Judge Taney delivered the opinion of himself and his pro-slavery brethren, that for this reason Dred Scott is not a citizen of the United States or of the State of Missouri, and is not included in that clause of the Constitution which gives jurisdiction to the Supreme Court in cases between citizens of different States. In deciding this question, the Court also decide that no free negro can be citizen, not even those residing in the States at the adoption of the Constitution. So that free negroes, whose ancestors were free to the third and fourth generation, who have been clothed, in the States, with all the rights and privileges of citizens and freemen, —if they are accidentally, either by force, cunning or capidity, reduced to slavery,—cannot maintain a suit to recover their liberty, but must remain slaves for life. The Court has no jurisdiction, and there is no alternative but to submit to the law of force which reduces them, their wives and daughters and all their posterity, to a cruel and ignominious bondage forever.

The reason, therefore, as rendered by the Court, for this decision is, that this class of persons, thus excluded from citizenship, are of an inferior order in point of civilization and refinement. The Court say that—"They had been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they have no rights which the white man was bound to respect." In the language of the plea they are negroes—African blood in their veins and of African descent. No matter how long they may have enjoyed the rights and privileges of freemen and citizens, yet they have no rights which the white man or the Supreme Court of the United States are bound to respect.

Your Committee, after deliberate examination, are of opinion that all free persons of whatever color in the United States, or in any Territory, if born in this country, are citizens; if born in a foreign land they are aliens until naturalized;—that this is a principle of universal application to which there is no exception by the Constitution of the United States, by the Constitutions of any of the States, or by the decisions of any court until recently. The only disabilities, therefore, existing to citizenship in the United States are alienage in the free, and slavery in the slave States. The one is removed by naturalization, the other by emancipation. All free negroes are therefore citizens, and have always been so regarded from the revolution down to the present time. The highest judicial tribunals of the slaveholding States have, from the foundation of the Government, constantly recognised this principle. In 1838 the Supreme Court of North Carolina, in a very elaborate opinion delivered in the case of the State vs. Manuel, laid down the doctrine, distinctly, that

“Foreigners until made members of the State continued aliens; slaves manumitted here became freemen; and, therefore, if born in North Carolina, are citizens of North Carolina; and all free persons born within the State are citizens of the State.”

Louisiana, Alabama, Missouri, Kentucky, and most of the other slaveholding States, have recognised this doctrine by judicial decision and by statutory provisions. On this point, also, the articles of the Confederation declared that

“The free inhabitants of each of the States shall be entitled to all the privileges and immunities of free citizens of the several States.”

When, therefore, South Carolina moved to amend this article by inserting the word “white” before the words “free inhabitants,” the amendment was lost by a vote of four to nine, showing clearly that the statesmen and patriots of that day were most emphatic in their decision against confining the right of citi-
zen-

ship to white inhabitants only. It was with a full knowledge of this fact, and of this void, that the Constitution of the United States was afterwards formed, which declares that

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The right, therefore, to these privileges and immunities by the citizens of each State, of whatever color or complexion, when in another State, including the right to bring suits and be made party in the Courts of the United States against citizens of other States, your Committee consider a fundamental right—a right unquestioned and here since the formation of the Government.—Any violation, therefore, of this right, is an equal violation of the Constitution of the United States and of this State; and any Constitution or form of Government, which would permit the rights and liberties of its citizens thus to be put in jeopardy or destroyed, is worthless and never binding on a free people.

Thus your Committee perceive that by these doctrines and by these decisions of the Federal Administration and the Federal Judiciary, if carried out to their legitimate conclusions, Vermont is powerless and every free State is powerless, in defence of their own citizens. Their State Sovereignty is gone. They are mere satellites, feebly revolting round a great central power. One consolidated Government, and one only exists, at the head of which stand the President and the Supreme Court. Like the upper and the lower millstone, these two powers are ceaselessly at work, crushing the rights and liberties of the masses as well as of the States.

But these States, and the millions of people who inhabit them, will not always tamely acquiesce in these unconstitutional encroachments on their rights. The numerical strength and the moral power are with them, and if united, as are the people of the South on all questions affecting *their* interests, the time is not distant when the Constitution shall be rescued from the

hands of the destroyer, and the States and people restored to their lost rights—when Freedom shall again be the rule and Slavery the exception. Even now the indications are strong that submission has ceased to be a virtue. The attempt to force a slave Constitution on the unwilling people of a Territory, and slavery on the free people of the States, has aroused those States and people from Maine to Delaware and from the Mississippi to the Atlantic. The power of the ballot-box and legislative power have not been invoked in vain. New-York has stepped boldly forth and met the Dred Scott decision with a law which declares the rights of citizenship to all her people, born there, or naturalized, of whatever color. Maine, Massachusetts, Connecticut and Rhode Island have, through their Legislatures, spoken defiance to Federal aggressions and Dred Scott decisions; and it is confidently hoped that Vermont will, in deference to the thousands of her citizens who have come here by petition, adopt measures which shall, at least, secure freedom to every person within her borders.

It will be seen that the rights of the States and the remedies indicated are, to a great extent, already discussed in this report. The Constitution of this State declares—

“That frequent recurrence to fundamental principles, and a firm adherence to justice, are absolutely necessary to preserve the blessings of Liberty and keep governments free.”

Now, as the encroachments of Federal power have been in consequence of a departure from fundamental principles (as well as special provisions) declared in the Constitution, your constitution have preferred, in the remedy proposed, to carry out, practically and faithfully, by law, some of these great fundamental principles. The Constitution of the United States, and of this State, nowhere recognises the right of property in man. The practical operation of this doctrine will be seen in the resolutions and bill reported. Again, the Constitution of the United States

declare that no person shall be deprived of life, liberty or property without due process of law. What could be more appropriate than, than to practically enforce this provision of the Constitution by a law which should secure its benefits to every person within the State? Constitutional language is used to enforce a constitutional provision, and this makes the remedy complete.

But there is another remedy, more remote. It is true, in the adoption of which this State can only act with her sister States, yet, if adopted, your Committee are of opinion would be efficient in restoring the Constitution to its primitive meaning, thus securing the rights of the citizens and of the States. The Judges of the Supreme Court, as now constituted, are an irresponsible body of men. They are not elected by the people, nor directly responsible to them. They are chosen by the Senate on the nomination of the President, and the Senators are themselves elected for six years. The Court is, therefore, responsible, if at all, to the President and Senate, and not to the people. Moreover, these Judges are elected *for life*, and cannot be displaced, except by impeachment, which history shows is rarely, if ever, resorted to. With such a Court, the liberties of the people are ever in danger. What care they about a people from whom they are so far removed? The Judges, without check or control, except by the President and Senate, combine with him and with the government to legalize oppression and wrong. Instead of Judges they become tyrants, breaking down the constitutional guarantees of freedom, to build up and strengthen a sectional interest with which they are identified.

That this is a correct representation of the power and disposition of the Federal Judiciary, we will quote an authority everywhere acknowledged, and especially by the Democracy of the country. That eminent statesman, Thomas Jefferson, eleven years after he had retired from the Presidency, when ripe with experience and age, in a letter to a friend thus speaks on this subject—

"The Judiciary of the United States is the subtle corps of sappers and miners, constantly working under ground to undermine the foundation of our confederated fabric. We shall see if they are bold enough to take the daring stride their five lawyers have lately taken. If they do, then I will say, that against this every man should raise his voice, and more, should uplift his arm."

The next year Mr. Jefferson wrote to Mr. Tliewat as follows:

"I am sensible of the inroads daily making by the Federal into the jurisdiction of its co-ordinate associates, the State Governments. The legislative and executive branches may sometimes err, but elections and dependence will bring them to rights. The Judiciary branch is the instrument which, working like gravity, without intermission, is to press us at last into one consolidated mass."

Again, in a letter to Mr. Hammond, under date of August 18, 1821, Mr. Jefferson wrote: "It has long, however, been my opinion, and I have never shrink from its expression, that the germ of dissolution of our Federal Government is in the Constitution of the Federal Judiciary. An irresponsible body, (for impeachment is scarcely a scare-crow,) working like gravity by night and by day, gaining a little to-day and a little to-morrow, advancing its noiseless step over the field of jurisdiction, until all shall be usurped from the States, and the Government of all be consolidated into one."

Thus speaks Mr. Jefferson, and thus does he truthfully portray the present Federal Judiciary, even to "*the daring stride their five lawyers have lately taken.*"

His Excellency, the Governor, in his Annual Message, the sentiments of which, on this subject, your Committee fully endorse, has well said, that "English liberty has been fixed upon its present firm foundations, not by the aid of judicial efforts, but in spite of them."

No "judicial efforts," in England, it is believed, have exceeded,

if equalled, in atrocity those of our own country, and more especially those of our highest tribunal. Your Committee are of opinion that it should be the aim of the States not only to "overcome these Judicial effects" by legislation, but to labor unitedly for such alteration of the Constitution as will shorten the term of office of the Judges to at least four years, and place their election directly in the hands of the people. The President and Vice President should also be chosen by the direct vote of the people, without the intervention of Electors. In the resolutions submitted, will be found the proposition for this purpose.

Your Committee cannot close this report without again alluding to the Constitution of the United States, inasmuch as the whole question under discussion, so far as it regards the rights of citizens and the liberties of the people, depends upon the construction placed upon that instrument.

In conclusion, then, and in review, after full examination and deliberation, your Committee would observe that, as one of the objects of the Constitution is to *secure justice*, we regard some of its provisions as *conflicting* with this object. It is true that in its name, wrongs and outrages may have been perpetrated; terror and desolation may have been carried to many a stricken heart, and thousands of innocent victims may have been sacrificed at its shrine—but none of these were ever sanctioned, or for a moment justified, by a single word in the Constitution. In its name, the citizens of the States have been, and may be again, enslaved, imprisoned, murdered, and the States deprived of their cherished rights: but it is a foul slander on the Fathers to assert that a Constitution, ordained by them, to secure the blessings of Liberty, sanctions any such outrage—an outrage that does violence to the common sense of the civilized world. The reverse of all this is true. Like its great prototype, the Declaration of Independence, on which it is founded, it maintains the equality, in rights, of the human race.

We plant ourselves, then, on this Constitution, and there we are determined to stand, firmly, unflinchingly, unmoved and unterrified by the combined assaults of Federal or of the Slave Power, whether manifested in fugitive or Nebraska Acts, Presidential Proclamations or Dred Scott decisions. This Constitution, so perverted and maligned in high places, shall yet be made to do its appropriate work and fulfill its sacred mission. The time is coming when it shall cease to be made the instrument of tyranny and oppression to the millions of this continent; but shall become the harbinger of peace, the bond of Union, and the great chart of Human Rights, securing, under its broad aegis, freedom to the whole people, of whatever condition. Then shall "liberty *and* Union, now and forever, one and inseparable," be something more than an unmeaning generality, addressed to the popular ear to gain ephemeral applause. In letters of living light, it shall be written in the hearts of the American people, from the broad Atlantic to the still broader Pacific, and from the snows of the Northern zone to the glittering gold regions under a Southern sun: everywhere, and in all time, it shall be A PRACTICAL REALITY, A LIVING DEMONSTRATION.

Your Committee recommend the adoption of the Joint Resolutions herewith reported, and the passage of the accompanying act, entitled "An Act to secure Freedom to all Persons within this State."

All which is respectfully submitted.

R. V. MARSH,
HENRY SAFFORD,
H. K. SLAYTON,
C. W. WICKER,
WALTER NEWELL.

The undersigned, while approving some of the foregoing Report, do not endorse the whole.

J. Q. HAWKINS,
H. HENRY POWERS.

JOINT RESOLUTIONS

REPORTED BY SELECT COMMITTEE ON SLAVERY AND THE DRED SCOTT DECISION.

Resolved, by the Senate and House of Representatives, That the Constitution of the United States invests Congress with the sole power to govern the Territories—a power always exercised, and never questioned by any department of the government, for more than sixty years after the adoption of the Constitution.

Resolved, further, That in the exercise of this power, Congress has the same right to exclude slavery, or any other evil, from the Territories of the United States, that the States have, by State legislation, to prohibit the same in the States ; and, as guardians of the public interests, it is the duty of Congress to exercise this right.

Resolved, That Congress has no power, by the Constitution, to create or sanction slavery, or to recognize its existence in any form ; and, consequently, has no right to establish or protect slavery in the Territories, or to admit new States into the Union whose constitutions tolerate domestic slavery.

Resolved, That Vermont will continue to resist the admission of new slave States into this Union, and the extension of slavery into the Territories of the United States, and, now as ever, will seek the abolition of slavery at the national capital, and in all places under federal jurisdiction.

Resolved, That all laws of Congress which recognize the right of property in man, or deprive any person of liberty without due process of law and a jury trial, or provide that any person shall be delivered up, as owing service to another, without such trial, are unconstitutional, void, and of no effect.

Resolved, That property in slaves exists only by the positive law of force in the States creating it. The moment it passes from under the operation of these laws, it is property no longer.

And whereas the present Federal Administration and Judiciary have denied to the government and people of the United States the right, which the Constitution guarantees to them, of prohibiting the introduction of slavery into the Territories ; and have denied the right of the citizens of the independent States of this Union to protect their liberties or property, by instituting suits in the Courts of the United States : therefore,

Resolved, further, by the Senate and House of Representatives, That the doctrine maintained by a majority of the Judges of the Supreme Court, in the case of Dred Scott, that slavery now exists, by virtue of the Constitution of the United States, in all the Territories, and in all places where the Federal Government has jurisdiction—that the Constitution carries slavery wherever it extends—has no warrant in the Constitution, or in the legislative or judicial history of this country.

Resolved, That these extra-judicial opinions of the Supreme Court of the United States are a dangerous usurpation of power, and have no binding authority upon Vermont, or the people of the United States.

Resolved, That no ingenious sophistry of the judges of that Court can make it appear that the citizens of each State are not citizens of the United States, and citizens *when in the other States*; and entitled, as such, to all rights and privileges of citizens in the several States.

Resolved, That whenever the Government or Judiciary of the United States refuses or neglects to protect the citizens of each State, in their lives or liberty, when in another State or Territory, it becomes the duty of the sovereign and independent States of this Union to protect their own citizens, at whatever hazard or cost.

Resolved, That the Senators in Congress from this State be directed, and our Representatives requested, to use their utmost endeavors to induce Congress to propose amendments to the Constitution of the United States, limiting the term of office of the Judges of the Supreme Court of the United States to four years; and that said Judges, together with the President and Vice President of the United States, be elected every fourth year, by the ballots of the legal voters in the States—a majority of all the votes cast at said election, in all the States, constituting a choice.

Resolved, That in case of no election of President or Vice President, in the manner prescribed in the preceding resolution, they should then be chosen, as such officers are now chosen, by Congress; and in case of no election of such Judges by the people, then to be chosen in the same manner the President is chosen in case of no election of President, by the voters of the States; and in case of no election of Judges, in the manner last prescribed, then the Judges holding office shall continue in the same until the next election by the voters of the States.

Resolved, That the Governor of the State be, and he is hereby requested, to transmit a copy of the House Report on Slavery, and these Resolutions, to the Governors of the several States, and to each of our Senators and Representatives in Congress.

H. 270.

[Reported by Mr. MARSH of Brandon, from Select Committee.]

AN ACT TO SECURE FREEDOM TO ALL PERSONS
WITHIN THIS STATE.

It is hereby enacted by the General Assembly of the State of Vermont, as follows:

1 SEC. 1. No person within this State shall be considered
2 as property, or subject, as such, to sale, purchase, or delivery ;
3 nor shall any person within the limits of this State, at any
4 time, be deprived of liberty or property without due process
5 of law.

1 SEC. 2. Due process of law, mentioned in the preceding
2 section of this act, shall, in all cases where an attempt is
3 made to restrain or deprive any person of liberty, be defined
4 to mean the usual process and forms in force by the laws of
5 this State, and issued by the Courts thereof; and under such
6 process such person shall be entitled to a trial by jury.

1 SEC. 3. Whenever any person in this State shall be de-
2 prived of liberty, arrested or detained, on the ground that
3 such person owes service or labor to another person, not an
4 inhabitant of this State, either party may claim a trial by
5 jury ; and, in such case, challenges shall be allowed to the de-
6 fendant, agreeably to sections four and five of chapter one
7 hundred and eleven of the Compiled Statutes.

1 SEC. 4. Every person who shall deprive, or attempt to
2 deprive, any other person of his or her liberty, contrary to
3 the provisions of the preceding sections of this act, shall, on
4 conviction thereof, forfeit and pay a fine, not exceeding two
5 thousand dollars nor less than five hundred dollars, or be
6 punished by imprisonment in the State prison for a term not
7 exceeding ten years: provided that nothing in said preced-
8 ing sections shall apply to, or affect the right to arrest or
9 imprison, under existing laws, for contempt of Court.

1 SEC. 5. Neither descent, near or remote, from an African,
2 whether such African is or may have been a slave or not, nor
3 color of skin or complexion, shall disqualify any person from
4 being, or prevent any person from becoming, a citizen of this
5 State, nor deprive such person of the rights and privileges
6 thereof.

1 SEC. 6. Every slave who shall come, or be brought, or
2 be in this State, with the consent of his or her master or
3 mistress, or who shall come, or be brought, or be involuntari-
4 ly in this State, shall be free.

1 SEC. 7. Every person who shall hold, or attempt to hold,
2 in this State, in slavery, or as a slave, any person mentioned
3 as a slave in the sixth section of this act, or any free person
4 of color, in any form, or under any pretence, or for any time
5 however short, shall, on conviction thereof, be imprisoned in
6 the State prison, for a term not less than one year nor more
7 than fifteen years, and be fined not exceeding two thousand
8 dollars.

1 SEC. 8. All acts and parts of acts inconsistent with the
2 provisions of this act are hereby repealed.

1 SEC. 9. This act shall take effect from its passage.